The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MICROSOFT CORPORATION, a Washington corporation,
 	
                                   Plaintiff,
 	
        v.
 	
MOTOROLA, INC., MOTOROLA MOBILITY, LLC, and GENERAL INSTRUMENT CORPORATION,
 	
                                   Defendant.
	NO. C10-1823-JLR
	
	DECLARATION OF KENNETH S. KING (IBM)

Kenneth S. King declares as follows:

1.   I make this declaration based on my personal knowledge of the facts described below.

2.   I am the General Manager, Intellectual Property, and Vice President, Research Business Development, at International Business Machines Corporation ("IBM"). In this role, I am responsible for IBM's corporate Intellectual Property licensing and assignment program.

3.   IBM has had for decades and continues to have an active and substantial program of licensing and selling patents and other types of Intellectual Property. Such program includes entering into patent cross license agreements with third parties, under which each party grants to the other licenses under its patent portfolio as it relates to the other party's business activities. Such cross licenses can include balancing payments from one party to the other to account for

DECLARATION OF KENNETH S. KING (NO. C10-1823-JLR) - 1

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differences in the size and relevance of the respective patent portfolios.

4.   In the industry, the balancing payment in a cross license agreement may be based on a number of factors, which may include: the breadth of the license granted; the size, strength and age of the respective patent portfolios; the relevant product and service revenue of the parties; and the extent to which the parties may already have patent coverage. IBM's particular pricing methodology for computing the balancing payments, reflecting the exact factors IBM relies upon and how it weights those factors, is trade secret information.

5.   Public disclosure of the terms of payments and the duration of the license (which reveals cost over time) regarding IBM's license agreements would negatively impact IBM in future license and settlement negotiations by giving potential licensees the ability to derive IBM's secret methodology for determining payments. The amount of the balancing payment in a particular agreement is a significant data point towards reverse engineering IBM's pricing methodology. Competitors and potential counterparties to licensing and settlement agreements would gain an unfair insight into IBM's analyses, particularly as IBM would know nothing about their methodology for the negotiations. Using their knowledge of the precise substantive and financial terms of previously nonpublic agreements, this unfair advantage would allow them to calibrate their negotiation strategies to the determent of IBM.

6.   The public disclosure of the commercially sensitive payment terms and duration of the license in regard to the license agreements with Motorola would harm IBM's patent licensing business.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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DATED in *Litchfield Connecticut*, this 29th day of October, 2012.

Kenneth S. King

Kenneth S. King

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CERTIFICATE OF SERVICE

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The undersigned attorney certifies that on the 29th day of October, 2012, I electronically
3   filed the foregoing with the Clerk of the Court using the CM/ECF system which will send
notification of such filing to all counsel on record in the matter.

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6   /s/ John A. Tondini
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